



hearing (“ATC Hearing”) and the contents of the entire Commission file (“ATC File”), now tenders her Proposed Findings of Fact and Conclusions of Law to the Commission.

## **II. EVIDENCE BEFORE THE LOCAL BOARD**

- A. The following individuals testified before the Local Board in favor of the Permittee:
1. Patricia Colley.
- B. The following exhibits were introduced before the Local Board in favor of the Permittee:
- None.
- C. The following individuals testified before the Local Board against the Permittee:
1. Patrick Mangan;
  2. Jack Long;
  3. Jim Frick;
  4. Dennis Staffelbach;
  5. Larry Alexander;
  6. Joseph Sergio; and
  7. Lynn Villanueva (a/k/a Linda Hochstedler).
- D. The following exhibits were introduced before the Local Board against the Permittee:
1. Law enforcement call records;
  2. Affidavit of Larry Alexander;
  3. Affidavit of Mark Huffer;
  4. Complaint filed by Lynn Villanueva regarding the wrongful death of her husband, Anthony Villanueva;
  5. Charging documents in case of State of Indiana v. Antoine Malone;
  6. Police records and documents pertaining to the case known as State of Indiana v. Antoine Malone;
  7. South Bend Tribune article from July 24, 2005 showing the conviction for prostitution of Glo-Worm employee, Dawn Jurenek;
  8. Affidavit of Andrew D. Ujdak;
  9. South Bend Tribune articles from February 2000;
  10. Documentation concerning credit charges assessed against Delta Star Electric, Inc.;
  11. Letters from Pastor David Jenkins (Senior Pastor, Calvary Baptist Church), Sam Walsh (former Crime Stoppers Coordinator & South Bend Police Officer), Kirby Falkenberg (CEO of the YMCA), and Jack Long (President, Delta Star Electric, Inc.) concerning the reputation and character of the principals of the Glo-Worm;

12. South Bend Tribune articles concerning the investigation and conviction of Andrew Ujdak;
13. South Bend Tribune articles concerning a connection between the principals of the Glo-Worm and James Nekvasil;
14. An opinion from the Indiana Court of Appeals in the case known as State of Indiana v. Brandon Serna;
15. Letter from the Citizens for Community Values (“CCV”) and South Gateway Association (“SGA”) counsel dated April 27, 2005 explaining the evidence and arguments against renewal of the license for Ramona’s Car Wash, Inc.;
16. Letter from the CCV and SGA counsel dated July 26, 2005 explaining the connection of Andrew Ujdak with the principals of Ramona’s Car Wash, Inc.;
17. South Bend Tribune articles and records from the Indiana Court of Appeals concerning the prosecution and conviction of Brandon Serna; and,
18. A study by WSBT, a local television station, over the prevalence of prostitution and rape in South Bend.

### **III. EVIDENCE BEFORE THE COMMISSION**

A. The following individuals testified before the Commission in favor of the Permittee:

1. Patricia Colley.

B. The following exhibits were introduced and admitted before the Commission in favor of the Permittee:

1. Minutes of the Commission’s meeting of August 16, 2005 in which the Commission voted to deny the renewal of the permit for Ramona’s Car Wash, Inc.; and,
2. A copy of the Agreement for Purchase and Sale of Property dated October 31, 2005.

C. The following individuals testified before the Commission against the Permittee:

1. James Frick.

D. The following exhibits were introduced and admitted before the Commission against the Permittee:

1. A letter from the Prosecuting Attorney for St. Joseph County;
2. Permittee’s answers to interrogatories propounded by CCV and SGA;
3. Letter of April 27, 2005 submitted to the Commission and the Local Board from counsel for CCV and SGA;
4. Letter of August 8, 2005 submitted to the Commission from counsel for CCV and SGA;
5. Local Board Exhibits R-1 through R-6; and,
6. An executive study showing the negative impact on communities of adult

entertainment establishments that provide alcoholic beverages.

E. Subsequent to the ATC Hearing, Permittee submitted Answers and Responses of Remonstrators in reference to Interrogatories and Request for Production of Documents previously propounded upon the Remonstrators.

#### **IV. FINDINGS OF FACT**

1. Permittee, Ramona's Car Wash, Inc., d/b/a Glo Worm Lounge, 702 South Michigan, is an applicant for renewal of a Type 210 ATC permit, permit number RR71-01498. ATC File.

2. A number of incidents occurred on the permit premises which violate the prohibitions against public nuisance contained in 905 IAC 1-27-2, including but not limited to:

- a. An illegal drug transaction and murder which resulted in the criminal prosecution and conviction of Brandon Serna for the murder of Jeffrey Smith on January 5, 2003;
- b. A raid conducted by South Bend Police Department in March 2004 that resulted in the conviction of Dawn Jurenek, an employee of Ramona's Car Wash, for prostitution; and
- c. A complaint filed by Lynn Villanueva against Patricia and John Colley for maintaining places of nuisance.

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3. The reputation and esteem of the principals of Ramona's Car Wash are not of the quality and caliber required by 905 IAC 1-27-1 based on the following:

- a. Letters submitted by (i) Jack Long, President Delta Star, Inc.; (ii) Kirby Falkenberg, CEO of the YMCA; (iii) Sam Walsh, former South Bend Police Officer; and, (iv) Pastor David Jenkins, Calvary Baptist Church.

- b. Records of numerous police calls reporting illegal activity at other establishments, Ace-Hi, Inc. and P.L., Inc., also owned by Patricia Colley.
- c. Opposition by members of the SGA to the continuation of the liquor permit in the hands of Ramona's Car Wash, Inc.
- d. A complaint filed by Lynn Villanueva against Patricia and John Colley for maintaining places of nuisance.
- e. Police records and reports from the Villanueva murder that show John Colley was an owner/manager of the Patricia Colley owned enterprises, and that he engaged in activities that included fighting.

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## **V. CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter pursuant to Ind. Code § 7.1-1-2-2 and Ind. Code § 7.1-2-3-9.
2. The permit application was properly submitted pursuant to Ind. Code § 7.1-3-1-4.
3. The Commission is authorized to act upon proper application. *Id.*
4. The Hearing Judge may take judicial notice of the Commission file relevant to a case, including the transcript of proceedings and exhibits before the Local Board. 905 IAC 1-36-7(a).
5. The Hearing Judge conducted a *de novo* review of the appeal on behalf of the Commission including a public hearing, and a review of the record and documents in the Commission file. Ind. Code § 7.1-3-19-11(a); 905 IAC 1-36-7(a), - 37-11(e)(2); *see also* Ind. Code § 4-21.5-3-27(d).
6. Evidence at the hearing was received in accordance with the Indiana

Administrative Code and the Commission's rules. The findings here are based exclusively upon the substantial and reliable evidence in the record of proceedings and on matters officially noticed in the proceeding. 905 IAC 1-37-11(e)(2); Ind. Code § 4-21.5-3-27(d).

7. The Commission has absolute discretion to issue or deny an application for a retail liquor permit. Ind. Code § 7.1-3-19-1.

8. The Commission may investigate an application for such a permit in whatever manner it deems best and may grant or refuse the application "as it deems the public interest shall be served best." Ind. Code § 7.1-3-19-10.

9. The Commission must revoke the permit "if the [Permittee] is not a person of strict integrity and high repute . . . ." Ind. Code § 7.1-3-9-10.

10. Pursuant to 905 IAC 1-27-1, the Commission must "consider whether acts or conduct of the applicant would constitute acts or conduct prohibited by the Indiana Penal Code . . . ."

11. Additionally, the Commission may consider the esteem in which the person is held by members of [the] community . . . ." *Id.*

12. The decision of the Commission to deny renewal of the Permit was based upon substantial evidence and was neither arbitrary nor capricious.

13. The Permittee is disqualified from holding the permit since it is not of (i) strict integrity and high repute; and (ii) good moral character and good repute in the community in which it resides.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that the appeal of Permittee, Ramona's Car Wash, Inc., d/b/a Glo-Worm Lounge, 702 South Michigan, South

Bend, Indiana 46601 for a type 210 Alcohol & Tobacco Commission permit is DENIED, the recommendation of the Commission in this matter is affirmed, and renewal of the Permit RR71-01498 applied for herein is DENIED.

DATED: \_\_\_\_\_

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U-Jung Choe, Hearing Judge

## **DISTRIBUTION**

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